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Local Government Act 1993

**CODE OF CONDUCT PANEL DETERMINATION REPORT
C24162 HOBART CITY COUNCIL CODE OF CONDUCT**

Complaint brought by Ms (now Councillor) Louise Elliot against Councillor Anna Reynolds

Code of Conduct Panel

- Jill Taylor, (Chairperson),
- Liz Gillam (Local Government Member)
- Rob Winter (Legal Member)

Date of Determination: 1 December 2023

Content Manager Reference: C24162

Summary of the complaint

A code of conduct complaint was submitted by Ms Louise Elliot to the General Manager, Hobart City Council and referred to the Code of Conduct Panel on 20 May 2022. This determination will refer to the complainant as Ms Elliot until she became a councillor when she was elected to the Hobart City Council in October 2022.

The complaint alleges that Councillor (Cr) Reynolds breached the following parts of the City of Hobart Elected Member Code of Conduct adopted by the Council on 18 February 2019:

PART 3 -USE OF OFFICE

- 1) The actions of an elected member must not bring the Council or the office of elected member into disrepute.***

PART 7 – RELATIONSHIPS WITH COMMUNITY, ELECTED MEMBERS AND COUNCIL EMPLOYEES

- 1) A councillor –***
 - a. must treat all persons fairly; and***
 - b. must not cause any reasonable person offence or embarrassment; and***
 - c. must not bully or harass any person.***

PART 8 – REPRESENTATION

- 7) The personal conduct of an elected member must not reflect or have the potential to reflect, adversely on the reputation of the Council.***

Ms Elliot also alleged that Cr Reynolds had breached Parts 2.2, 8.5 and 8.6 which were dismissed at initial assessment.

As per the *Local Government Act 1993* (the Act), Schedule 8A – Savings and Transitional Provisions, the Code of Conduct Panel is required to determine the complaint under the former City of Hobart Elected Member Code of Conduct (the Code) approved on 18 February 2019 which was in force at the time of the alleged breach of the Code. The current City of Hobart Elected Member Code of Conduct was approved on 20 February 2023 postdating the incident which is the subject of this complaint.

Initial assessment

Following receipt of the complaint, the Chairperson conducted an initial assessment of the complaint in accordance with the requirements of section 28ZA of the Act. Having assessed the complaint against the provisions of sections 28ZB and 28ZC of the Act, the Chairperson determined that:

- the complainant had not made a reasonable effort to resolve the complaint prior to lodging it. However, the Chairperson accepted her explanation for not complying with this requirement. Ms Elliot acknowledged that she was contacted by the CEO of the Hobart City Council the day following the meeting at which the behaviour that is the subject of the complaint occurred and was invited to attend a meeting with Cr Reynolds. The complainant said she was not offered to have a support person attend with her and on reflecting that offer overnight declined stating she would not feel comfortable under the circumstances.
- the complaint substantially related to a contravention of the Code adopted on 18 February 2019;
- the complaint should not be dismissed on the grounds that it was frivolous, vexatious or trivial. The reasons for this conclusion were that if proven, the alleged incident would constitute a breach of the Code;
- having made enquiries of the Code of Conduct Executive Officer, there was no relevant direction under section 28ZB(2) or 28ZI of the Act that would apply to the complainant and the complaint.¹

On this basis, the Chairperson determined to investigate the complaint.

The complainant, respondent councillor and the General Manager were notified of the outcome of the initial assessment by letter dated 14 June 2022.

On 28 July 2022, Cr Reynolds' legal representative wrote to the Chairperson, requesting an extension of the 14 days period of response. Due to a range of factors, including requests for the clarification of the materials provided by Ms Elliot, and scheduled periods of leave, the Chairperson granted a number of extensions to Cr Reynolds' legal representative to 9 September 2022. On that day Cr Reynolds statutory declaration responding to the complaint, and other material in support of her response to the complaint was received.

Investigation

In accordance with section 28ZE of the Act, the Code of Conduct Panel (the Panel) investigated the complaint.

The following documents have been presented to the Panel to consider as evidence in this matter:

1. Complaint by Ms Elliot under cover of a statutory declaration dated 18 May 2022.
2. Copy of the City of Hobart Elected Member Code of Conduct adopted by Council on 18 February 2019.
3. YouTube recording of Public Hearing in Town Hall on 11 May 2023.
4. Statutory declaration by Mr Steven Isaac dated 3 June 2022.
5. Statutory declaration by Mr Geoffrey Young dated 22 June 2022.

¹ Section 28ZB(2) and 28ZI of the Act enable the Chairperson or the Panel (as applicable) to issue a direction to a complainant in prescribed circumstances not to make a further complaint in relation to the same matter unless the complainant provides substantive new information in the further complaint.

6. Statutory declaration by Ms Victoria Eaves-Young dated 27 June 2022.
7. Statutory declaration by Cr Simon Behrakis dated 4 July 2022.
8. Statutory declaration by Mr Jeffrey Briscoe dated 9 August 2022 attaching a photo showing Cr Anna Reynolds taken at the public meeting held on 11 May 2022.
9. Statutory declaration by Mr Jonathon Elliot dated 13 July 2022.
10. Statutory declaration by Ms Pam Sharp dated 27 July 2022.
11. Statutory declaration by Ms Louise Elliot dated 9 August 2022 with photo shot of texts between her and Cr Simon Behrakis.
12. Response to Ms Elliot's complaint from Cr Reynolds under cover of statutory declaration dated 9 September 2022 with the following attachments -
 - Attachment 1 – Transcript of Louise Elliot at public meeting
 - Attachment 2 - Response to question to Save UTAS public meeting
 - Attachment 3 - Email dated 12 May 2022 from Ms Elliot to Cr Reynolds
 - Attachment 4 - Email dated 15 May 2022 from Cr Reynolds to Ms Elliot
 - Attachment 5 – Copy of article from Mercury newspaper dated 13 May 2022
13. Statutory declaration by Ms Alison Waters dated 8 September 2022 attaching a photo of some attendees at the public meeting held on 11 May 2022.
14. Statutory declaration by Mr Mathew Etherington dated 9 September 2022.
15. Statutory declaration by Ms Margaret Taylor dated 8 September 2022
16. Statutory declaration by Ms Patrica Knight dated 7 September 2022.
17. Statutory declaration by Mr Gregory Kay dated 7 September 2022.
18. Statutory declaration by Mr Andrew Wilkie dated 6 September 2022.
19. Statutory declaration by Cr Helen Burnet dated 9 September 2022 attaching a copy of responses to questions at the public meeting.
20. Response by Ms Elliot under cover of a statutory declaration dated 13 September 2022 to Cr Reynolds statutory declaration dated 9 September 2022.
21. Statutory declaration by Ms Anne Burleigh dated 2 October 2022.
22. Statutory declaration by Ms Mary Perkins dated 30 September 2022.
23. Statutory declaration by Cr Ben Lohberger dated 29 May 2023.

Given the significant amount of evidence provided by the parties and witnesses, the Panel decided to hold a Directions Conference to establish whether there was agreement on any of the facts and to determine which, if any, of the witnesses should be called for the purposes of giving their evidence and being cross-examined at a hearing. The Directions Conference was originally set down for 12 October 2022 but was stayed as the Panel was advised that on 5 October 2022, Ms Elliot had made a complaint to Tasmania Police in relation to the same incident. On the basis of legal advice, the Panel did not proceed with the Directions Conference and suspended its investigation into Ms Elliot's complaint.

On 12 May 2023, Tasmania Police advised that that it would be taking no further action in relation to Ms (now Councillor) Elliot's complaint, and it was formally dismissed in the Magistrate's Court on 5 May 2023. The Panel re-commenced its investigation, relisting the Directions Conference which was held on 8 June 2023.

The outcomes of the Directions Conference were: -

1. Cr Elliot to provide a statutory declaration by Mr Denis McLoughlin and a copy of her statement to Tasmania Police under cover of a statutory declaration to the Executive Officer within seven (7) days. The Executive Officer will then provide a copy of those documents to Cr Reynolds.
2. At the Directions Conference, Cr Elliot provided copies of statutory declarations made by Ms Mary Perkins dated 30 September 2022 and Ms Anne Burleigh dated 2 October 2022 to Cr Reynolds.

3. The Executive Officer to provide copies of a statutory declaration by Mr Ben Lohberger dated 29 May 2023, social media posts by Cr Elliot and excerpt from the Tasmania Police website attached to Cr Reynolds email of 29 May 2023, within seven (7) days.
4. Cr Elliot and Cr Reynolds to advise any objections to the admission of the additional evidence provided to them at, and subsequent to, the Directions Conference within fourteen (14) days.
5. Cr Elliot and Cr Reynolds to provide the names of which, if any, witnesses they wish to have present at the hearing of the complaint for the purposes of cross examination, within fourteen (14) days.
6. Cr Elliott and Cr Reynolds to advise any days, or parts of days, that they are not available from 26 June 2023 to 12 August 2023, for the purpose of scheduling hearings. This advice to be provided within fourteen (14) days.

After the Directions Conference, both Cr Elliot and Cr Reynolds advised that they wished to have all of each other's witnesses available for cross-examination at the complaint hearing. Attempts by Cr Elliot to secure a witness statement from Mr Denis McLoughlin were not successful as he was overseas, and Cr Elliot advised she would withdraw him as a witness. Witness statements by Mr Ben Lohberger, Ms Burleigh and Ms Perkins were supplied and provided to the parties. The parties agreed to accept this additional evidence.

Further delays to proceed to a hearing were caused by unavailability of Cr Reynolds and a Panel member who had travel commitments overseas and the complexities associated with contacting the eighteen witnesses to ascertain their availability to attend the hearing and coordinating their attendance.

The hearing was finally set over two days, viz. 28 and 29 September 2023 and, due to the non-availability of some of the witnesses, a third day arranged for 18 October 2023.

The complaint to be determined was an allegation by Ms Elliot that Cr Reynolds physically grabbed her by the arm and pulled her toward her as Ms Elliot was walking back to her seat from the stage where she had been speaking. Ms Elliot further alleges that Cr Reynolds verbally accosted her in an aggressive manner stating over and over "you're wrong, Louise". Ms Elliot further alleges that during her speech, some witnesses around Cr Reynolds had heard her say "bullshit" and "it is all lies", essentially calling Ms Elliot a liar.

Hearing

As per section 28ZH of the Act, the Panel held a hearing on 28 September 2023, 29 September 2023 and 18 October 2023 at the Town Hall in Hobart. One witness, Ms Pamela Sharpe attended by video.

Cr Elliot and Cr Reynolds made an affirmation at the commencement of the hearing undertaking that all their evidence was true and correct. Witnesses had previously made their statements under cover of a statutory declaration, affirming the correctness and truth of their statements. Three exceptions were Ms Alison Waters, Mr Gregory Kay and Ms Patricia Knight who made statutory declarations whilst overseas that were not witnessed in accordance with Australian Government statutory requirements. These three witnesses made an affirmation at the hearing that their evidence was a true and accurate record of what they witnessed.

The following witnesses appeared at the hearing:

For Cr Elliot

Mr Steven Isaac

Mr Geoffrey Young

Ms Victoria Eaves-Young

Cr Simon Behrakis

Mr Jeffrey Briscoe
Mr Jonathon Elliot
Ms Pam Sharp
Ms Anne Burleigh
Ms Mary Perkins

For Cr Reynolds

Ms Alison Waters
Mr Mathew Etherington
Ms Margaret Taylor
Ms Patrica Knight
Mr Gregory Kay
Mr Andrew Wilkie
Cr Helen Burnet
Cr Ben Lohberger

THE COMPLAINT

MS (now Councillor) LOUISE ELLIOT

In her complaint under cover of a statutory declaration dated 18 May 2022, Ms Elliot alleged Cr Reynolds -

- physically grabbed me by the arm and pulled me toward her so I was uncomfortably close as I tried to walk past her to return to my seat after speaking
- verbally accosted me aggressively, stating over and over in a possessed manner “you’re wrong, you’re wrong, you’re wrong Louise”
- swore while I spoke, with multiple people hearing her say “bullshit” as I spoke
- verbally declared, so that several people around her could hear, that what I was saying “is all lies”, essentially calling me a liar, which was heard by many people in her vicinity

Cr Elliot confirmed that her substantive evidence was set out in her statutory declaration and complaint dated 18 May 2022, and a statutory declaration dated 9 August 2022 attaching a message she received from Cr Simon Behrakis during the meeting. Cr Elliot also referred to her evidence as set out in her statutory declaration of 13 September 2022, which responded to the evidence set out in Cr Reynolds’ statutory declaration of 9 September 2022.

Cr Elliot confirmed the contents of her statutory declarations are her clear recollections of what occurred to her on the evening of 11 May 2022 at the City Hall meeting.

Cr Elliot confirmed that she did not hear comments allegedly made by Cr Reynolds whilst she was delivering her speech, but that she had subsequently been told what occurred by some of her witnesses.

Cr Elliot stated that the video of the public meeting, which was available to all parties at the hearing, although not showing the actual incident, clearly showed Cr Reynolds shaking her head whilst Ms Elliot was giving her speech.

Cr Elliot was cross-examined by Cr Reynolds about her motivation for bringing her complaint, it being specifically put to Cr Elliot that this was done to advance her own political agenda. Cr Elliot refuted this assertion stating that she made her complaint because she did not consider that a public figure should behave in the way Cr Reynolds did to a then member of the public, in a public arena, during a public event.

Cr Elliot also refuted assertions that the witnesses supporting her recollection of the events were influenced by it being subsequently publicised on social media and in the mainstream media that she had been “grabbed” by Cr Reynolds, nor that she herself, had been influenced by other witnesses in that regard.

Cr Elliot remained firm in her evidence that she was grabbed by the left arm and pulled by Cr Reynolds towards her.

Cr Elliot confirmed being invited to a meeting on 12 May 2022 by the then Chief Executive Officer (CEO) of the Hobart City Council (HCC) Ms Kelly Grimsby in an effort to mediate the incident between her and Cr Reynolds that occurred at the public meeting of 11 May 2022. Cr Elliot reiterated what she had stated in her complaint that she had not been offered a support person.

Cr Reynolds asked why Cr Elliot did not accept the public apology that she was given to which Cr Elliot responded by saying “this did not admit the full conduct”.

When questioned by the Panel as to why she didn’t request a support person, Cr Elliot indicated that she did not consider it would have been in her interest to attend as she felt there would be a power imbalance.

THE RESPONDENT

CR ANNA REYNOLDS

Cr Reynolds confirmed her affirmation of 28 September 2023 at the commencement of her evidence on the morning of the 29 September 2023.

In her statutory declaration of 9 September 2022, responding to the complaint lodged by Ms Elliot, Cr Reynolds said that in her capacity as Lord Mayor, she attended the public meeting held on 11 May 2022, which was organised by the Hobart City Council. Cr Reynolds said that in her presentation Ms Elliot made several serious accusations intending to discredit her. During Ms Elliot’s presentation, Cr Reynolds stated that she did shake her head in disagreement. Cr Reynolds said a woman behind her (who has subsequently been identified as Dr Victoria Eaves-Young) said something but Cr Reynolds could not recall exactly what she said, but she did turn and say words to the effect of “well its wrong”.

Cr Reynolds said that as Ms Elliot was walking past her after she left the stage, she “extended her arm to lightly touch her on the forearm” to get her attention. Cr Reynolds said, “I did not grab her”. Furthermore, Cr Reynolds denied calling Ms Elliot a liar, but she did agree that she said the word “bullshit” in her discussion with Ms Elliot.

At the hearing, Cr Reynolds confirmed the content of her statutory declaration of 9 September 2022 and went on to indicate that the context of her actions on the evening of 11 May 2022 were important, particularly as at the time of that meeting, Ms Elliot had indicated that she intended to become a Council candidate and was making comments directed at both her and the Council. Cr Reynolds said that Ms Elliot’s evidence was an exaggeration, and this was part of a pattern of misinformation.

Cr Reynolds said that the meeting was ‘supercharged’. Cr Reynolds confirmed she did shake her head at times and that she discussed what Ms Elliot was saying in a private conversation with Cr Helen Burnett, the Deputy Mayor, who was seated to her immediate right.

With regard to her discussion with Dr Eaves-Young, who was seated behind her, she recalled saying to her words to the effect “it is not right, it is not true.” She denied using the term “bullshit” and saying, “it’s all lies”.

Concerning her interaction with Ms Elliot, Cr Reynolds said that as Ms Elliot walked past her, she said her name and touched Ms Elliot on the forearm to get her attention, as she wanted to speak to her about what she had said in her speech.

Cr Reynolds denied that this was accosting or abusing Ms Elliot. She denied shouting at or grabbing Ms Elliot.

Cr Reynolds said each of the witnesses who presented on Ms Elliot's case, had a flavoured view of her (Cr Reynolds), Ms Elliot, the University of Tasmania situation and published versions of the exchange. Cr Reynolds said that the incident was "heavily promoted" by Ms Elliot but not by her.

WITNESSES FOR THE COMPLAINANT

MS ANNE BURLEIGH

Ms Burleigh gave evidence in relation to the contents of her statutory declaration dated 2 October 2022. In her statutory declaration, Ms Burleigh stated that she saw Cr Reynolds and Ms Elliot "face to face" - with no body space between them. When Ms Elliot broke away, she was visibly upset, very pale and shaking.

Ms Burleigh viewed a still image from the video of the public meeting and confirmed that she was wearing a red jacket and was sitting six to seven rows back from the front row where Cr Reynolds was sitting, but on the opposite side.

Ms Burleigh recalled Ms Elliot coming off the stage and going to pass Cr Reynolds to walk back up the aisle to her seat. Ms Burleigh said she had a side profile view but did not see Cr Reynolds touch Ms Elliot. She added that she could see Cr Reynolds' hands were near Ms Elliot's arms. Ms Burleigh said that they were both standing. She confirmed her recollections that Cr Reynolds was not wearing her mask, nor was Ms Elliot.

Cr Reynolds asked Ms Burleigh whether she knew Cr Elliot at the time of the meeting to which she said "no". Ms Burleigh, however, did admit that she had read some of Cr Elliot's tweets and Facebook posts, but claimed that this did not impact on the details of her statutory declaration.

MR STEVEN ISAAC

Mr Isaac gave evidence in relation to his statutory declaration of 3 June 2022, in which he stated that he saw Cr Reynolds "grab Ms Elliot by the arm forcefully and pull her into speak to her". He also stated that Ms Elliot had to pull her arm away and that she looked "very shocked".

Mr Isaac pointed to where he was sitting in the video which was about 10 rows back on the same side of the aisle as Cr Reynolds, stating he had a "clear view up the aisle". Confirming his statutory declaration, Mr Isaac said he saw Cr Reynolds pull Ms Elliot back towards her. Cr Reynolds was seated, and Ms Elliot was above but was pulled down to face level by Cr Reynolds. Mr Isaac said that Ms Elliot looked "disturbed".

Mr Isaac was cross-examined by Cr Reynolds in relation to whether his view of the events had been influenced by the reading of post event social media posting by Ms Elliot and her supporters. Mr Isaac indicated that he had read some of Ms Elliot Facebook posts. However, he said this had not influenced his recall or recollections of the night.

He confirmed that it appeared to him that it was Ms Elliot's left forearm that was grabbed by Cr Reynolds, quite forcefully. He did not consider Ms Elliot was leaning in for conversation. Ms Elliot looked worried or concerned. He considered asking if Ms Elliot was okay.

COUNCILLOR SIMON BEHRAKIS

In his statutory declaration dated 4 July 2022, Cr Behrakis said that he saw Cr Reynolds grab Ms Elliot "specifically an overhand grip on her left bicep to stop her from walking away" and Cr Reynolds pulled Ms Elliot towards her. He said the incident lasted about 10 seconds and he saw Ms Elliot "jerk her arm free" and she had a "noticeably confused and distressed look on her face". He added that he was too far away to hear what was said.

Cr Behrakis confirmed that he did not know Cr Elliot well prior to the date of the incident, their contact being more based on social media.

Cr Behrakis identified his position on the still image from the video of the meeting as being the fifth person seated in the front row along from the centre aisle with Cr Reynolds sitting beside the aisle.

He said he saw others around him looking to their left, which caused him to do the same. He then leaned forward to look to see what was occurring and it was at this point that he saw Cr Reynolds had an overhand grip on Ms Elliot's left bicep and was pulling her down. He did not see Cr Reynolds reach out. Cr Behrakis said Cr Reynolds and Ms Elliot's faces were quite close. He saw Ms Elliot pull away, shaking her head and looking bemused as she walked back to her seat.

When asked about the length of the interaction, he said contact was all over in about 5 seconds.

He said that it was because of his concern for Ms Elliot that he sent a message to her at 7.43 pm.

Cr Behrakis was cross-examined by Cr Reynolds about his relationship with Ms Elliot and the political advantage in Ms Elliot bringing this complaint, and the weaponising of the Code of Conduct process for political advantage. Cr Behrakis responded by saying he was against such an approach and that he made his statutory declaration because of what he had seen Cr Reynolds do to Ms Elliot at the meeting.

Cr Behrakis was also cross examined by Cr Reynolds about his use of the words "Did Anna just have a crack at you?" in the message to Ms Elliot. Cr Behrakis indicated that the word "crack" was just slang for the context of the contact between Ms Elliot and Cr Reynolds that he had just observed. He stated that he had used more formal language in his statutory declaration. That is why he didn't say "Did Anna grab you" in his message.

Cr Reynolds asked Cr Behrakis when he had come into possession of Ms Elliott's mobile number, given his text message to her at 7.43 pm on the evening of this event. Cr Behrakis replied that the message he sent was not a text message to Cr Elliot's mobile phone number which he did not believe he had at that time, but a Facebook message. This reflected the way they communicated at this time.

Cr Behrakis confirmed that he only had a very short glimpse of the left side of Ms Elliott's face as she stood up and started to walk away from the contact she had with Cr Reynolds.

MS MARY PERKINS

Ms Perkins gave evidence in relation to the content of her statutory declaration of 30 September 2022, in which she stated that she had not actually seen the incident between Cr Reynolds and Ms Elliot.

She said she stayed behind after the meeting to introduce herself to Ms Elliot, telling the hearing that Ms Elliot was visibly shaken and upset. During their conversation, Ms Elliot told Ms Perkins that "the Mayor had grabbed hold of her".

In response to Cr Reynolds question about how long she had been following Ms Elliott's social media, Ms Perkins said that she couldn't remember.

MR JONATHAN ELLIOTT

In his statutory declaration dated 13 July 2022, Mr Elliot, husband of the complainant Louise Elliot, said he watched Ms Elliot give her speech, walk off the stage and into the middle aisle. He saw Cr Reynolds reach out and grab Louise's left arm, just above the elbow, and pull her down to her level as Cr Reynolds was sitting.

At the hearing, Mr Elliott indicated his position on the still photograph from video. The photo shows he was approximately 6 rows back and four people in from the aisle.

Mr Elliot said that Ms Elliot came off the stage and was walking up centre aisle when her head disappeared, so he moved his head to see. He could not hear but something was being said (between Cr Reynolds and Louise). Their faces were about 30 cm apart. Louise did not look comfortable and shrugged her arm away.

He added that he could see the expression on Louise's face as she walked back to her seat beside him and that she appeared pale and rattled and said to him "Anna grabbed me". Not long after she sat down, Louise received a message from Cr Behrakis.

In the aftermath of the event Mr Elliot said that Louise kept repeating what had occurred. Based on previous experience he said that she had a tendency to constantly repeat things when she is in shock or experiencing trauma.

He did recall that Ms Elliot was offered an opportunity for a meeting with Cr Reynolds, but declined, as she did not want to have a meeting with Cr Reynolds as she didn't feel safe, and she did not wish to be alone with her.

Mr Elliot was cross-examined about the content of his statutory declaration and his evidence and his description and comments regarding the text message received by Ms Elliot from Cr Behrakis. He re-affirmed the contents of his statutory declaration and evidence given at the hearing.

Mr Elliot confirmed that he had likely seen social media commentary regarding the event subsequent to its occurrence, but this didn't influence his evidence.

MR JEFFREY BRISCOE

Mr Briscoe, a former Hobart City Councillor, first submitted a statutory declaration dated 8 July 2022 but submitted a further statutory declaration dated 9 August 2022. The wording in both statutory declarations was the same, but the later declaration contained a photograph of Cr Reynolds as Attachment A.

In his statutory declaration, Mr Briscoe stated that he "saw Ms Elliot being grabbed by Cr Reynolds by her upper arm and pulling her down (as Cr Reynolds was sitting) very close to her face – maybe 20 cm away where she was held for some time before managing to break away". Mr Briscoe added that Cr Reynolds was "showing an aggressive face and an angry manner". He stated that he did not hear what Cr Reynolds was saying. In his statutory declaration, Mr Briscoe said he didn't say anything to Ms Elliot to give her time to recover, but Ms Elliot said to him "she grabbed me Jeff, Anna grabbed me".

His location, as identified, was on the left side of the aisle probably 6–7 rows back from the stage. His seat was slightly further into the aisle, "kind of offset", which gave him a much more direct view of what occurred.

He was adamant that he saw Cr Reynolds grab the arm of Ms Elliot and that at the time it appeared that Cr Reynolds was very agitated and upset because he could see "the varicose veins on her legs". Cr Reynolds told the hearing she did not have varicose veins in her legs.

Cr Elliot asked Mr Briscoe if she had expressed a concern about meeting with the Lord Mayor. Mr Briscoe confirmed that Cr Elliot had told him she had advised the CEO that she felt unsafe in the presence of the Lord Mayor.

When cross-examined by Cr Reynolds, he said he did not speak to Ms Elliot as she walked back to her seat. Cr Reynolds stated this was contrary to what was indicated in his statutory declaration. Mr Briscoe indicated that he wished to "correct the record" and would certainly rely on the contents of his statutory declaration made months earlier. (The Panel noted that Mr Briscoe did not say in his statutory declaration that he spoke to Ms Elliot as she returned to her seat.)

In cross-examination by Cr Reynolds, Mr Briscoe strongly denied that there was any political motivation and a strategy to lodge code of conduct complaints against her as part of a political campaign.

Mr Briscoe indicated some reticence or difficulty in responding to this line of questioning but reiterated that what was in his statutory declaration was an accurate recounting of what had occurred, and he did so because of his clear concern about the behaviours of Cr Reynolds on this evening.

During cross-examination by Cr Reynolds and questioning by the Panel, Mr Briscoe checked his mobile phone and confirmed that the photograph as Attachment A to his statutory declaration of 9 August 2022 was in fact taken at 8.08pm. This was some time after Ms Elliot had returned to her seat.

MR GEOFFREY YOUNG

In his statutory declaration, dated 27 June 2023, Mr Young said he was sitting in the second row with his wife – he was right behind Cr Burnet and his wife was behind Cr Reynolds. He said that during Ms Elliot’s speech, Cr Reynolds was shaking her head “intimating she was not happy with what was being said”. He added that he heard Cr Reynolds say “bullshit”. As Ms Elliot was walking back to her seat, Mr Young said that Cr Reynolds “grabbed her by the arm and pulled her towards her in quite a forceful manner.”

Cr Elliot asked Mr Young if they knew each other, and he replied “no”. Cr Elliot asked him if he recalled Cr Reynolds shaking her head and he said he did. Mr Young said that there were comments between Cr Burnet and Cr Reynolds, but he couldn’t hear what they were saying, except that he heard Cr Reynolds say “bullshit”.

When asked by Cr Elliot what happened after she left the stage, Mr Young said that Cr Reynolds grabbed her by the left forearm and pulled Cr Elliot to her. The incident lasted about 10 seconds. When asked by Cr Elliot how it ended, Mr Young said she pulled away and walked back to her seat. He added that it didn’t look like a pleasant exchange. He could not see Cr Elliot’s facial expression as she returned to her seat.

When asked by Cr Reynolds if he heard what she had said to Cr Burnet, he said he couldn’t hear because “there was a lot of noise”, he couldn’t see her mouth but did hear her say “bullshit”. When asked by Cr Reynolds about what he had seen he said that Cr Reynolds grabbed Cr Elliot by her left arm and had a vivid recollection that it was the forearm. Mr Young said that he had discussed the incident with his wife and the word “bullying” had been used. He said that he had read Cr Elliot and Cr Behrakis’ posts, adding that he reads a lot of “pollies and civic members posts”.

DR VICTORIA EAVES-YOUNG

In her statutory declaration of 27 June 2023, Dr Eaves-Young stated that at the meeting of 11 May 2022 she witnessed Cr Reynolds “forcefully take hold of the forearm of Louise Elliot”. Dr Eaves-Young was sitting directly behind Cr Reynolds and stated that she heard Cr Reynolds say “bullshit” during Ms Elliot’s presentation. She said that Cr Reynolds’ demeanour and constant head shaking, indicated that Cr Reynolds was “agitated at the content of Ms Elliot’s speech”. As Ms Elliot returned to her seat, Cr Reynolds “grabbed Ms Elliot’s arm pulling her towards her”. Dr Eaves-Young stated that Cr Reynolds “continued to berate Ms Elliot all the while continuing her firm grasp of Ms Elliot’s arm.”

When asked by Cr Elliot if Dr Eaves-Young knew her, she replied that they had met once. Cr Elliot said she did not remember that. When asked by Cr Elliot if Cr Reynolds was shaking her head, Dr Eaves-Young replied, yes and that Cr Reynolds was frequently turning to comment to Cr Burnet. Dr Eaves-Young said that as Ms Elliot was returning to her seat, Cr Reynolds grabbed her by the arm saying it was rubbish or words to that effect. When asked by Cr Elliot whether the interaction was an everyday occurrence, Dr Eaves-Young replied “no”. Dr Eaves Young said that Cr Reynolds had hold of Ms Elliot for about a minute until she pulled away. She added that Ms Elliot “looked pale”. Dr Eaves-Young said that the only time Cr Reynolds shook her head was when Ms Elliot was speaking.

Cr Reynolds said that she saw Dr Eaves-Young’s statutory declaration on Cr Elliot’s twitter and asked if Cr Elliot had her permission to post it. Dr Eaves-Young confirmed she did. Cr Reynolds asked Dr Eaves-Young whether she saw her face and she replied that she didn’t but saw Cr Reynolds constantly shaking her head and having a conversation with Cr Burnet. Cr Reynolds asked if Dr Eaves-Young was certain it was Cr Reynolds who said “bullshit” and not Cr Burnet.

Dr Eaves-Young said Cr Burnet did not open her mouth. When asked by Cr Reynolds what occurred after she alleged Cr Reynolds said “bullshit”, Dr Eaves-Young said “excuse me” but she couldn’t recall exactly how Cr Reynolds’ replied but she turned, pulled down her mask and said it was something to the effect “well it is”. When Cr Reynolds noted that Dr Eaves-Young Facebook comment said, “it’s all lies”, Dr Eaves-Young replied that was the same as saying “well it is”. In relation to Cr Reynolds grabbing Ms Elliot’s arm, Dr Eaves-Young said that it was her left forearm and that Cr Reynolds had pulled with her left arm and then also her right arm.

Cr Elliot asked Dr Eaves-Young why she had contacted Cr Behrakis to which she replied that she felt he had a strong sense of justice.

PROFESSOR PAMELA SHARPE

Ms Sharpe appeared by video link.

In her statutory declaration dated 22 July 2022, Prof Sharpe said she was sitting across the aisle from Cr Reynolds at the meeting on 11 May 2022. This was confirmed by video record of the event.

She said that while Ms Elliot was speaking, Cr Reynolds shouted “bullshit”. As Ms Elliot was returning to her seat, Cr Reynolds grabbed her arm and pulled Ms Elliot towards her. Prof Sharpe described Ms Elliot as “shaken” and said that she “was trying to recover for days afterwards”.

When asked by Cr Elliot whether they knew each other, Prof Sharpe said they did know each other through their involvement in the “Save UTAS” committee. When asked by Cr Elliot about how Cr Reynolds was at the meeting, Prof Sharpe said that Cr Reynolds was “visibly quite agitated” and that she heard Cr Reynolds shout “bullshit” and saying, “that’s not right”. Prof Sharpe said that as Ms Elliot was going back to her seat, Cr Reynolds grabbed her arm pulling Ms Elliot towards her, restraining her. Prof Sharpe said the interaction lasted 2-3 minutes. Prof Sharpe said that she could see words were being exchanged between them and she heard Cr Reynolds say she didn’t agree. When asked by Cr Elliot whether Cr Reynolds’ hand stayed on her arm during this exchange, Prof Sharpe said “pretty sure”. Prof Sharpe said that the behaviour she witnessed was probably okay in some circumstances such as a café but not at a public meeting.

When Prof Sharpe and Ms Elliot caught up a couple of days later regarding Save UTAS, Prof Sharpe said that Ms Elliot was still upset. Prof Sharpe said that she did not see any interaction between Cr Reynolds and other speakers and that she had a clear view of the interaction between Cr Reynolds and Ms Elliot.

When questioned by Cr Reynolds, Prof Sharpe said that Save UTAS Facebook was set up by a committee about 2 years ago and Ms Elliot had joined the committee at some point. Cr Reynolds asked if Prof Sharp displayed a poster of Ms Elliot in her front yard during the lead up to Council elections period and she said she did. Cr Reynolds asked Prof Sharpe did she get hearing her say “bullshit” confused with when Ms Elliot and Cr Reynolds were speaking as Ms Elliot was returning to her seat. Prof Sharpe said it was while Ms Elliot was speaking, adding that Cr Reynolds was very engaged in the debate and may not have been conscious of saying it. She recognised Cr Reynolds voice and said she thought Ms Elliot could have heard it on the stage.

Cr Reynolds asked Prof Sharpe whether she had a clear view given that Ms Elliot was standing between the two of them in their seats when the interaction occurred. Prof Sharpe said she was “pretty sure she could see”. Prof Sharpe said she could not remember which hand Cr Reynolds used but she grabbed her wrist, her pulling Ms Elliot towards her to speak in her ear.

Prof Sharpe said that she spoke to Cr Behrakis and Mr Wilkie, adding that Mr Wilkie said, “he didn’t think it was acceptable”.

When asked her view about Cr Elliot’s police action, Prof Sharpe said she thought it was a bit extreme, and told Cr Elliot that when they met for coffee, pointing to the fact that Cr Reynolds had made a public apology.

Cr Reynolds asked Prof Sharpe whether she had read Cr Elliot's Facebook posts, which she agreed she had. Cr Reynolds then asked did it confirm her views on what happened, and she answered "yes".

Cr Reynolds said that she understood that a group from Save UTAS went to a pub after the meeting and asked if Prof Sharpe joined them, which she confirmed. When asked was the incident discussed, Prof Sharpe said there was probably some discussion between some people, but there was a genuine feeling that the meeting had been a good outcome for the group.

WITNESSES FOR THE RESPONDENT

MS MARGARET TAYLOR

In her statutory declaration dated 8 September 2022, Ms Taylor said she watched Ms Elliot leave the stage and walk past her to return to her seat. Ms Taylor said that she saw Cr Reynolds touch Ms Elliot's arm and say something but could not hear what was said. Ms Taylor said that Cr Reynolds did not "grab" Ms Elliot or approach her in an "aggressive way".

At the hearing, Ms Taylor confirmed the content of her statutory declaration identifying herself to be amongst the line of speakers at the front of the stage area, by reference to the video.

In cross-examination Ms Taylor agreed with Cr Elliot that she had supported Cr Reynolds at times and that she was happy with her as Lord Mayor. She also told Cr Elliot that she was surprised "how nervous" she (Ms Elliot) was. Ms Taylor said she had a clear view and could see the look on Ms Elliot's face saying it looked like "what's going on here".

She agreed that it appeared to her that Ms Elliot had not welcomed the encounter. She said that Cr Reynolds reacted "emotionally", but it wasn't violent and that she wouldn't use the word "accosted". Using her experience as a teacher, Ms Taylor said that she was aware that you "weren't supposed to touch" others. She added that you could probably say "grabbed", but it was not forceful. When contact occurred, Ms Elliott turned around and stopped.

Ms Taylor agreed this all happened very quickly. She did not hear what was said between them.

Ms Taylor said she was aware police charges had been laid by Ms Elliot against Cr Reynolds.

MS ALISON WATERS

As Ms Waters' statutory declaration was witnessed in the United Kingdom, she affirmed its contents during the hearing on 29 September 2023.

In her statutory declaration dated 8 September 2022, Ms Waters said she witnessed an interaction between Ms Elliot and Cr Reynolds. She said that as Ms Elliot walked back to her seat Cr Reynolds "had a word to Ms Elliot" as she passed her adding that "it was unremarkable". She asserted that Ms Elliot "did not appear upset or disturbed".

At the hearing, Ms Waters indicated that she was located in the same row as Mr Briscoe, referencing the attachment to her statutory declaration (which was a screen shot taken from the video of the meeting.)

In cross-examination by Ms Elliot, Ms Waters indicated that she hardly knew Cr Reynolds at all but knew Cr Reynolds' mother.

Ms Waters said that she was confident that the contents of her statutory declaration of 8 September 2022 were an accurate reflection of her recollections of what occurred on the evening of 11 May 2022. She could see Cr Reynolds' head and that Cr Reynolds said something to Ms Elliot as she walked past but did not see any physical contact between Cr Reynolds and Ms Elliot. She added that Ms Elliot "probably put her head down".

Ms Waters said it was a very brief interaction, only a couple of seconds, adding "neither Ms Elliot nor Cr Reynolds looked angry or upset. It seemed normal to me."

She said that in her opinion Ms Elliot did not seem agitated. She said she could hear some people saying the word ‘bullshit’ during the meeting, but she had no idea who that was.

MR (now Councillor) BEN LOHBERGER

Mr Lohberger said in his statutory declaration dated 29 May 2023, that as Ms Elliot walked past Cr Reynolds, Cr Reynolds “reached out and placed her hand on Louise Elliot’s forearm.” He said he watched as Cr Reynolds looked up to Ms Elliot and started to speak to her. He said it sounded like a normal conversation. Cr Lohberger said that it looked to him like Cr Reynolds touched Ms Elliot to get her attention. He added that he “did not believe that it was a ‘grab’ or forceful hold” sufficient to stop or restrain Ms Elliot.

At the hearing, Cr Lohberger confirmed that he was sitting across the aisle from Cr Reynolds, but a row behind. Cr Lohberger gave evidence that in May 2022 he would describe his views as opposed to those of Cr Reynolds. In terms of any interactions, he said that they knew who each other were.

He said he made his statutory declaration dated 29 January 2023 to Tasmania Police because he had heard about the police charge against Cr Reynolds and wanted to put his recollections of what had occurred, to them.

Cr Lohberger said he did not watch the interaction between Cr Reynolds and Ms Elliot closely, because he wasn’t too concerned about it, and he was also speaking to a friend who was sitting next to him. He said that he did not consider or feel that this was a violent incident. He said that Cr Reynolds had her mask on. He didn’t recall Ms Elliot’s demeanour after the meeting, save for the fact that Ms Elliot declined to go to a local pub to discuss issues with him and others (who were Save UTAS supporters). She certainly did not mention any “grab” that he could recall.

He did not recall Ms Elliot to be pale or shaken, but it was dark in the hall, with not perfect lighting. He said that he’d heard of Ms Elliot’s versions of the interaction between her and Cr Reynolds on this night, through hearsay, but that what he’d seen didn’t indicate to him that Cr Reynolds had been aggressive or abusive to Ms Elliot.

In cross-examination Cr Lohberger confirmed that he made his statutory declaration after contacting the police, just to let them know what he knew about this incident. He confirmed that his statement was made in January 2023, to Tasmania Police.

When requested by Cr Reynolds’ legal representatives he completed the statutory declaration dated May 2023 which is before this hearing.

He said he’d heard the word “bullshit” while Ms Elliot was on the stage but couldn’t identify who said it.

He recalled seeing Cr Reynolds reach up at the same time Ms Elliott stopped. Ms Elliott then pulled away and walked off. He recalled Cr Reynolds touching Ms Elliot on the left arm about the elbow. He said the interaction lasted 30-60 seconds, could have been 2 minutes. Being so close he heard the words “secret meeting”. He said he didn’t have a clear view of Ms Elliott’s face and reiterated that Cr Reynolds had her mask on. He said that he saw the start of this interaction with Cr Reynolds reaching up, with him glancing back each five seconds or so as he was using his phone and talking to his friend.

He said Cr Reynolds contact with Ms Elliot didn’t look like a forceful touch, but it was an unwise thing to do.

He agreed that Ms Elliott didn’t look happy when she walked off and that she actually looked “pissed off.” In his view, Ms Elliott was annoyed and not happy and almost a little bit angry.

In response to Cr Reynold’s cross-examination, he said he was not aware that Cr Reynolds had made an apology to Ms Elliott. He said that he has a “Hair trigger on aggressive behaviour”, based on his work experience, and he did not see this as aggressive.

MR ANDREW WILKIE

In his statutory declaration of 6 September 2022, Mr Wilkie stated that he was not aware of the incident until after the event. He stated that he was positioned to have easily seen and/or heard an altercation between Cr Reynolds and Ms Elliot.

Mr Wilkie was sitting in the front row in the fourth chair along from Cr Reynolds sitting in the first seat. Mr Wilkie gave evidence that he'd heard about the issues between Cr Reynolds and Ms Elliot in the media after the meeting. He said that he didn't recall anything untoward and was prepared to make a statutory declaration to that effect as he did look around in the general direction of Cr Reynolds and Ms Elliot at the meeting but did not think much of it.

Mr Wilkie didn't recall hearing the word "bullshit" being used during the meeting, but he agreed that Ms Elliot made a strong speech which was critical of the relationship between the Hobart City Council and UTAS.

Mr Wilkie said Ms Elliot's speech was not saying anything that he "thought was improper", adding that "It was a perfectly reasonable speech to give."

In cross-examination by Cr Reynolds, Mr Wilkie said he was confident that what was contained in his statutory declaration was correct, otherwise he would not have made it. He confirmed what occurred between Cr Reynolds and Ms Elliot was a brief conversation before Ms Elliot went back to her seat. It lasted for a number of seconds, and it was just unremarkable. He said he did not recall anyone being angry which would be memorable, and he would recall that if he saw it.

He said he did not see Cr Reynolds touch Ms Elliot on the arm. He reiterated that what he saw was a brief exchange between Ms Elliott and Cr Reynolds and he didn't hear the word "bullshit" said.

In questioning from the Panel, he agreed that he would have needed to stand up to see exactly what contact was made.

MR MATTHEW ETHERINGTON

In his statutory declaration dated 9 September 2023, Mr Etherington said he saw Cr Reynolds lean forward towards Ms Elliot to get her attention. He said that Cr Reynolds body language appeared to be "gentle".

Mr Etherington confirmed that he was seated on the stage at the front of the City Hall awaiting his turn to give his speech and was concentrating on his notes.

From there he did not see anything of concern other than the two exchanging some words. He said that he spoke to several people after the meeting concluded and none raised the issue of an incident between Cr Reynolds and Ms Elliot.

He said he was able to see what occurred between Ms Elliot and Cr Reynolds and that it was gentle, in the sense that there was no level of urgency and the contact between Ms Elliot and Cr Reynolds did not strike him as aggressive.

He recalled seeing Ms Elliot later in the evening and that she didn't appear shaken or pale, but he agreed he only had a couple of seconds to make that assessment. He didn't recall her mentioning the event with Cr Reynolds.

He did remember reading social media and seeing reports in The Mercury in the following days about what had happened, and he said that what was being indicated as serious allegations conflicted with his perceptions of what occurred. He agreed with Cr Reynolds that this was "trial by media" as there was no right of reply.

In cross-examination by Cr Elliot, Mr Etherington agreed that as he was preparing for his speech and reading his notes, he only glanced up to see the contact between Ms Elliot and Cr Reynolds. He agreed in cross-examination that his glance could have been for less than a second. He agreed that he didn't hear any of the conversation. He reiterated that the contact between Ms Elliot and Cr Reynolds from his perspective was gentle and not aggressive, which he conceded was a statement more of opinion, than of description.

COUNCILLOR HELEN BURNET

In her witness statement submitted under cover of a statutory declaration dated 6 September 2022, Cr Burnet stated that she attended the Save UTAS public meeting on 11 May 2022 and sat in the front row besides the Lord Mayor, Cr Reynolds.

Cr Burnet further stated that many of Ms Elliot's assertions were not true, and she and Cr Reynolds made a number of comments to each other during Ms Elliot's presentation. Much of what they said was muffled as they both wore face masks. Cr Burnet said she did not recall Cr Reynolds saying "bullshit" during Ms Elliot's presentation. Cr Burnet said that it was her understanding that the woman sitting behind Cr Reynolds might have stated that she heard Cr Reynolds say it. Cr Burnet said that Cr Reynolds may have said something to the women by turning to her left, but Cr Burnet, sitting on her right, did not hear anything Cr Reynolds said.

Cr Burnet said that Cr Reynolds remained seated as Ms Elliot walked past her. She said that Cr Reynolds reached out and touched Ms Elliot to gain her attention. She said there was no "pulling or grabbing" adding "it was clear from each person's body language that Ms Elliot voluntarily stopped in the aisle near the Lord Mayor to hear what the Lord Mayor had signalled she wanted to say".

At the hearing Cr Burnet confirmed, that although she had not signed her statutory declaration until 6 September 2022, she had discussed the incident with Cr Reynolds' solicitor a couple of days after the incident.

When asked by Cr Elliot how long she had known Cr Reynolds, Cr Burnet said since she has been on Council and prior to that as a member of the Greens, approximately 10-12 years. Cr Elliot put it to Cr Burnet that her political views more closely aligned with Cr Reynolds rather than hers. Cr Burnet said that was the case in respect of some matters, but not others. Cr Elliot asked if their political differences were behind a motion brought by her at the last Council meeting, to refer Cr Elliot to Local Government Division and the Anti-Discrimination Commission. In response to further questioning by Cr Elliot, Cr Burnet said that the elected members attended the Save UTAS meeting to listen to what was being said. When asked by Cr Elliot if she thought Cr Reynolds shaking her head indicated she was angry, Cr Burnet said Cr Reynolds was not angry but exasperated.

Cr Elliot asked Cr Burnet if she had heard Cr Reynolds say "bullshit". Cr Burnet said either she or Cr Reynolds may have said it. Cr Burnet did not hear the exchange with the woman sitting behind Cr Reynolds.

Cr Elliot asked if she had heard her refer to "secret" meetings in her speech. When Cr Burnet replied that she had, Cr Elliot noted that she had not used the word "secret".

Turning to the incident, Cr Burnet said that she saw Cr Reynolds touch Ms Elliot on the arm and Ms Elliot lean into Cr Reynolds. Cr Burnet said the incident lasted for about 30 seconds. When asked if she thought Cr Reynolds' arm stayed on Ms Elliot during their conversation, she answered "possibly". Cr Burnet said she did not hear what was being said as Cr Reynolds had turned her face away from her but there was no shouting. When asked how the incident ended, Cr Burnet said that Ms Elliot went back to her seat.

In a follow up question Cr Reynolds asked Cr Burnet if she had posted comments relating to the incident on social media. Cr Burnet said she didn't think so and certainly would not have paid to make comment.

MS PATRICA KNIGHT

Ms Knight made an affirmation that her evidence was true and correct as her statutory declaration was signed when overseas and may not have been compliant.

In her statutory declaration, dated 7 September 2022, Ms Knight said that she had attended the Save UTAS meeting on 11 May 2022. She said she was sitting on the opposite side of the aisle to Cr Reynolds about 4 seats in from the aisle - 3 rows behind Cr Reynolds.

She said she saw Ms Elliot leave the stage to go back to her seat and as she approached Cr Reynolds, Cr Reynolds placed her hand on Ms Elliot's forearm. She said the touch was fleeting.

When asked by Cr Reynolds how she came to make the statutory declaration, Ms Knight explained that she and her partner were in the UK on a walking tour when they saw an article about the incident which she did not agree with and felt she needed to make a response. Ms Knight noted that she is a supporter of keeping UTAS in Sandy Bay.

Cr Elliot asked Ms Knight how long she had known Cr Reynolds to which she replied that she knows of her as the Lord Mayor. In reply to Cr Elliot about who prepared her statutory declaration, Ms Knight said that she and her partner (Greg) discussed the alleged incident, but they each completed statutory declarations independently.

When asked if she heard Cr Reynolds saying "bullshit" or shaking her head, Ms Knight said she didn't hear that but did see Cr Reynolds shaking her head. Ms Knight said, "we all shook our heads at some time".

When asked by Cr Elliot how Ms Knight felt she looked, Ms Knight said that she didn't look like someone who had been accosted, and that as she walked back smiled at Mr Briscoe indicating a "gotcha moment".

Ms Knight said she couldn't see Cr Reynolds fingers but did she her reach out towards Ms Elliot momentarily. Ms Knight said the interaction only lasted a few seconds.

MR GREGORY KAY

Mr Kay made an affirmation that his evidence was true and correct as his statutory declaration was signed when overseas and may not have been compliant.

In his statutory declaration, dated 7 September 2022, Mr Kay said he sat about 3 rows behind Cr Reynolds on the opposite side to her, stating that he had a clear view of the aisle and Cr Reynolds. As Ms Elliot was returning to her seat, he saw Cr Reynolds reach out and place her hand on Ms Elliot's forearm. He said the touch was "fleetingly", but long enough to stop Ms Elliot. Mr Kay said that he did not hear what was said. When Mr Kay read the article in the newspaper the next day where Ms Elliot asserted that Cr Reynolds "accosted" her, he wrote to Cr Reynolds stating that he had a perfect view and did not observe Cr Reynolds' actions as "aggressive".

When asked by Cr Reynolds how well he knew her, Mr Kay said "only as a public figure".

Cr Elliot asked Mr Kay had he and Ms Knight discussed the matter. Mr Kay said that they had but they completed their statutory declaration separately. When further questioned he did agree that maybe there were some similarities with both of their statements. When asked by Cr Elliot if he saw Cr Reynolds shaking her head, Mr Kay said he was listening intently to Ms Elliot and did not see that. Mr Kay confirmed that when Ms Elliot was passing Cr Reynolds on the way back to her seat, Cr Reynolds put her hand out to touch her, clearly wanting to correct her. Mr Kay said that the incident was very brief – only a few seconds. As Ms Elliot walked back to her seat, she did not have the look of someone accosted but looked triumphant- a "Gotcha moment".

During the hearing a number of further exhibits were tabled by both Cr Elliot and Cr Reynolds, which were solely directed at efforts to impugn the credibility of witnesses.

Additionally, the panel took into evidence screen shots from the YouTube recording of the meeting, which were annotated to confirm the location of relevant witnesses, along with the full YouTube recording of the meeting.

SUMMARY OF HEARING

From the outset, Cr Elliot and Cr Reynolds maintained their own version of what transpired between them. Cr Elliot was adamant that she was “grabbed” by Cr Reynolds. Cr Reynolds stated that she called her name, Louise, and when Ms Elliot didn’t respond, “touched her lightly on the arm to get her attention.”

During the hearing, Cr Elliot advised that she had a hearing deficit in her left ear.

The Panel had difficulty in establishing the degree to which physical contact was made by Cr Reynolds with Cr Elliot. It was unfortunate that the video recording did not capture the actual incident between Cr Elliot and Cr Reynolds. However, it did give the Panel a view of where all the witnesses were seated and what they could have reasonably witnessed clearly from their respective positions.

The video shows that Cr Elliot took just under one minute from completing her speech and leaving the stage to returning to her seat. The interaction between her and Cr Reynolds took place in this timeframe.

There was little corroborating evidence that could be drawn from all the eighteen witnesses. Some of the evidence presented by witnesses at the hearing varied from that contained in their statutory declarations. The Panel accepts this may have been contributed to by the length of time that had elapsed. There was also significant variation between witnesses’ evidence particularly in relation to the following –

- what actual contact occurred, which arm or part of the arm and which hand Cr Reynolds used to reach out to Cr Elliot
- whether the contact had been forceful or not
- whether Cr Reynolds pulled Cr Elliot towards her or Cr Elliot leaned closer because she could not hear properly
- how long the interaction between them lasted
- if, when or by whom the expression “bullshit” had been used

It was clearly apparent to the Panel during the hearing the asserted political motivations by each party figured prominently in each case.

DETERMINATION

As per section 28ZI of the Act the Code of Conduct Panel determines that Cr Anna Reynolds has breached Parts 3.1 (as it applies to the office of Alderman), 7.1 (a) and (b) and 8.7 of the Code, and therefore the Panel upholds part of the complaint. The Panel dismisses Part 7.1 (c) of the complaint.

This decision has been arrived at by the Panel –

1. having had the benefit of receiving written submissions from both Cr Elliot and Cr Reynolds;
2. having had the benefit of statutory declarations of witnesses;
3. having had the benefit of seeing the both the complainant and respondent give their evidence;
4. having considered all the oral and documentary evidence presented to it in the hearing, including a close analysis of the evidence of respective witnesses and their demeanour;

5 having made a close analysis of the video recording of the meeting; and

6 consideration of the written submissions by Cr Elliot and Cr Reynolds following the hearing.

Due to the late finish on day three of the hearing (18 October 2023), the Panel advised both parties that they would be afforded 14 days to submit final summaries. The parties were advised that they would receive copies of each other's summary, but no further comments would be accepted by the Panel as it had concluded its investigation.

In matters such as this, the onus is upon the complainant to prove her allegations according to the civil standard, that is on the balance of probability.

This is a consistent approach for Panels such as this, following the principles set out in *Briginshaw v Briginshaw* [HCA34:(1938) HCA34(1939) 60CLR 336

at 362]:

"The seriousness of an allegation made, the inherent likelihood of occurrence of a given description, or the gravity of the consequence flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved."

On the available evidence the Panel was unable to find compelling corroborative evidence that this contact amounted to a forceful "grab" but was satisfied that Cr Reynold's intentional physical contact with the arm of Ms Elliot so she could talk to her about her speech was sufficient to stop Ms Elliot from returning to her seat.

Given Cr Elliot's advice that she had a hearing deficit in her left ear, the Panel was unable to be satisfied that Cr Reynolds "pulled Ms Elliot "down towards her" as alleged. The Panel found that this hearing deficiency is equally consistent with Ms Elliot, after being contacted by Cr Reynolds on her arm, leaning down to Cr Reynolds seated level to listen to what she was saying to her.

Cr Elliot's allegation was that Cr Reynold's "verbally accosted her", whereas Cr Reynolds response was that she simply wanted to tell Ms Elliot that she was wrong in what she was saying. There was insufficient evidence to corroborate either statement. The Panel noted that it was Cr Reynolds' opinion that what Ms Elliot was saying was not correct.

Cr Reynolds admitted to using the word "bullshit" when she was speaking to Ms Elliot. Evidence presented at the hearing indicated that the word "bullshit" was used whilst Ms Elliot was speaking, however, it is unclear as to who uttered the word at that time.

The Panel's reasons are listed below in relation to the specific Parts of the Code

Part 3– USE OF OFFICE

Part 3.1

The Panel dismisses that aspect of this Part as it relates to bringing the Council into disrepute. The alleged incident involved the behaviour of only one elected member in a discrete event. No evidence was produced to support any contention that this incident brought the Council itself into disrepute. However, it upholds the complaint that the actions of Cr Reynolds in making the physical contact with Ms Elliot in a public meeting did bring the role of elected member into disrepute. The Panel is of the view that a reasonable person would expect a mayor to maintain a standard of behaviour in a public forum that is above reproach. Cr Reynolds acknowledged that she should not have behaved in the way she did. Some of her own witnesses agreed that it was not appropriate behaviour at a public meeting that the Hobart City Council was hosting, in a public place. The Panel upholds the breach of this Part of the Code to the extent outlined above.

Part 7 - RELATIONSHIPS WITH COMMUNITY, ELECTED MEMBERS AND COUNCIL EMPLOYEES

Part 7.1. (a)

In viewing the recording of the public meeting, the Panel noted that Ms Elliot was the only speaker approached by Cr Reynolds. There was no other evidence provided that Cr Reynolds spoke to other presenters during the meeting. Whilst it acknowledged that perhaps Ms Elliot's assertions during her speech may have been particularly critical of Cr Reynolds and the Council, others did speak forcefully about the role Council should play in preventing the move of UTAS to the city. The Panel determines that Cr Reynolds did breach Part 7.1 (a) as it was unfair to treat Ms Elliot differently from other speakers. The Panel upholds the breach of this Part of the Code.

Part 7.1 (b)

Whilst noting that Ms Elliot's evidence that she has a hearing deficit in her left ear and might not have heard Cr Reynolds initially use her name, the Panel found that Cr Reynolds applied sufficient contact to cause Ms Elliot to stop as she was returning to her seat and to make eye contact with her. The meeting was a public forum and Cr Reynolds was known to those at the meeting as the Lord Mayor having provided a welcome in that capacity. The Panel accepts that Ms Elliot was offended and/or embarrassed by being drawn aside by Cr Reynolds who was sitting in the front row, where the interaction would have been witnessed by many of the attendees. The Panel determines that this Part of the Code has been breached. The Panel upholds the breach of this Part of the Code.

Part 8 – REPRESENTATION

Part 8.7

Requires that the personal behaviour of an elected member must not reflect adversely on the reputation of the Council. On this occasion the Council was hosting the event and Cr Reynolds, as Lord Mayor, represented the Council by welcoming attendees to the event. There would be little doubt that those present knew who Cr Reynolds was. Cr Reynolds acknowledges that her behaviour was inappropriate under the circumstances. The Panel agrees with this assessment and therefore determines that this Part of the Code has been breached.

Sanctions

Section 28ZI(1) of the Act provides that (emphasis added) "after completing its investigation of a code of conduct complaint, the Code of Conduct Panel is to determine the complaint" by upholding the complaint or dismissing it or upholding part and dismissing the remainder.

Section 28ZI(2) of the Act then says "If the code of conduct complaint or part of it is upheld, the Code of Conduct Panel may impose one or more" of several listed sanctions. Section 10A(1)(c) of the Acts Interpretation Act 1931 ("AIA") provides that in any Act the word "may" is to be construed as being discretionary or enabling.

The Panel wrote to Cr Reynolds on 7 November 2023 inviting her to make a submission regarding what sanction should be applied. Cr Reynolds responded on 21 November 2023 stating that as the Panel had the option of not applying a sanction and it was her view that no sanction should apply. Cr Reynolds contended that in her view the breach was not serious and that her behaviour was a "mistake", and she has altered her behaviour accordingly. Furthermore, she added that she had apologised for her behaviour at the time of the incident.

In determining an appropriate sanction, the Panel had regard to Cr Reynolds submission. However, as the Panel found that the Code had been breached as outlined above, it considers it is appropriate to apply a sanction.

Cr Reynolds is an experienced elected member and mayor and by her own admission, should not have approached Ms Elliot during the public meeting in the way the Panel has found she did.

Although the Panel accepts Cr Reynolds made an apology to Ms Elliot in the days following this event, the Panel has determined that a caution is an appropriate sanction in these circumstances.

Timing of the Determination

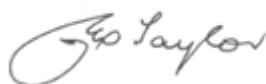
In accordance with section 28ZD (1) a Code of Conduct Panel is to make every endeavour to investigate and determine a code of conduct complaint within 90 days of the chairperson's determination that the complaint is to be investigated.

The Panel has been unable to determine the complaint within 90 days, and in fact, has needed a considerably longer period of time. Reasons include the following:

- Cr Reynolds was responding to a number of complaints at the time this complaint was made and requested, and was granted, an extension of time to respond;
- Cr Reynolds was absent for a period of pre-planned leave in June 2022 prior to the commencement of this investigation and a further period to travel overseas in July 2023;
- There were a significant number of witness statements, some of which had to be followed up as they were non-compliant;
- A police investigation was initiated by Cr Elliot on 5 October 2022 just prior to a Directions Conference readying for the hearing of the complaint. The Panel received advice that Cr Reynolds had become the subject of a Police charge of common assault arising from the same matters the Panel was investigating. From this time until April 2023, on the basis of legal advice, the Panel did not proceed with its investigation. In late April the Panel received advice that Tasmania Police were not proceeding with the charge against Cr Reynolds, allowing the Panel's investigation to recommence;
- Over the extended period of this investigation, members of the Panel were unavailable from time to time because of other commitments and periods of leave;
- Delays were experienced in ascertaining mutually convenient dates for Panel Members and parties to the complaint for the Directions Conference and ultimately the Complaint Hearing, for which there was the further complication of accommodating hearing times for eighteen witnesses.

Right to review

A person aggrieved by the determination of the Code of Conduct Panel, on the ground that the Panel failed to comply with the rules of natural justice, is entitled under section 28ZP of the Act to apply to the Magistrates Court (Administrative Appeals Division) for a review of that determination.



Jill Taylor
Chairperson



Rob Winter
Legal Member



Liz Gillam
Member

1 December 2023